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January 13, 2010

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OFFICE OF GENERAL  
COUNSEL

JONATHAN S. SHURBERG (MD, DC)

**BY FAX AND U.S. MAIL**

Jeff S. Jordan, Esquire  
Supervisory Attorney  
Complaints, Examination &  
Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

RE: MUR 6243

Dear Mr. Jordan:

I am writing in response to your December 29, 2009 letter to Nancy Navarro, the respondent in the above-referenced matter. I have been retained as Ms. Navarro's counsel; a Statement of Designation of Counsel is attached hereto. Please direct all future communications to my attention.

I have reviewed the complaint filed by Mr. Eric Hensal, and respectfully submit that his complaint, which I note parenthetically is the fourth separate complaint filed by him against Ms. Navarro with either state or federal authorities, is factually and legally meritless.

Ms. Navarro acknowledges that she utilized the services of a web design firm, Infomonagas, located in Managas, Venezuela to set up her website. This firm is owned by Ms. Navarro's nephew in Venezuela, Anffer Astudillo, who did not charge Ms. Navarro for the time spent setting up Ms. Navarro's campaign website, [www.nancynavarro.org](http://www.nancynavarro.org). Please note that the extent of Mr. Astudillo's work was simply to set up the web site; the content of the site was created by others here in the United States under Ms. Navarro's direction.

Mr. Hensal claims that the above activities constituted a violation of 2 U.S.C.A. § 441e(1)(A), which prohibits a "foreign national" from making "a contribution or donation of money or other thing of value" to a political candidate or committee in any federal, state or local election.

As Mr. Hensal notes, Ms. Navarro reported the value of the work done by Mr. Astudillo as an in-kind contribution to the Maryland State Board of Elections. This was both appropriate and required under Maryland law, as set forth in § 7.4 of the Summary Guide to Campaign Finance.

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Finance. However, Maryland law, unlike federal law, does not itself bar foreign nationals from making political contributions.

However, while the value of Mr. Astudillo's services was a "contribution" under Maryland law, it was decidedly ~~not~~ a contribution under federal law, which Mr. Hensal fails to note in his complaint letter, and which is a prerequisite to the federal violation that Mr. Hensal claims has occurred. Pursuant to 2 U.S.C.A. § 431(8)(B)(I), "[t]he term 'contribution' does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." Similarly, 11 C.F.R. § 100.74 states that "[t]he value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution." These two provisions describe precisely the nature of the activities engaged in by Mr. Astudillo – he was a volunteer, he provided services, and he was not compensated. Therefore, while the value of Mr. Astudillo's services was required to be reported as an in-kind contribution under Maryland law, his activities, by federal statutory and federal regulatory definition, were not a "contribution."

Mr. Hensal's complaint letter alternates between calling Mr. Astudillo's activities a "contribution" (Ms. Navarro "solicited as well as received the contribution") and a "donation" (he claims that Ms. Navarro "knowingly solicited and accepted a donation of a completed campaign web site from Mr. Astudillo") for purposes of federal law. As an initial matter, I submit that the term "contribution or donation of money or other thing of value" is a single term and not intended to be treated in the subjunctive. To the extent that Mr. Astudillo's activities were not a contribution, therefore, they cannot alternatively be seen as a donation. This position is supported by the regulatory definition of a "donation." For purposes of 2 U.S.C.A. § 441e(1)(A), the term "donation" is defined in 11 C.F.R. § 110.20(a)(2) as having "the same meaning as in 11 C.F.R. § 300.2(e). This latter section defines "donation" as "a payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions." Curiously, however, 11 C.F.R. § 100.52 states that "[a] gift, subscription, loan, . . . advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution." So although one section defines a "donation" as not including a "contribution," another section which defines the definition of "donation" equates that definition to . . . a contribution!

In any event, to the extent that "donation" means something separate from "contribution," I submit that such distinction is simply inapplicable in the context of the facts of this case. Mr. Astudillo's activities were not (1) a payment, (2) a gift, (3) a subscription, (4) a loan, (5) an advance, (6) a deposit, or (7) a thing of value, which I submit indicates a tangible object rather than an intangible thing. What Mr. Astudillo's activities were, most precisely, were services provided by a volunteer which were not compensated, which, under 2 U.S.C.A. § 431(8)(B)(I) and 11 C.F.R. § 100.74, were not contributions and therefore could not form the basis of a violation of 2 U.S.C.A. § 441e(1)(A). I therefore submit on behalf of Ms. Navarro that there has been no violation law in this case, and respectfully request that the Commission dismiss the complaint filed by Mr. Hensal.

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Jeff S. Jordan, Esquire

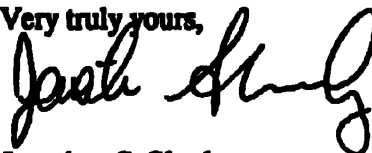
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As a final note, I wish to bring to your attention the fact that Mr. Hensal has clearly and willfully violated the provisions of 2 U.S.C.A. § 437g(a)(12)(A). He has provided a copy of his complaint letter and discussed it extensively with the media, including the Gazette newspaper, which today published a story about Mr. Hensal's complaint. See attached article. While I am quoted regarding the allegations, the initial contact was made by the reporter, Erin Cunningham, to Ms. Navarro, and she has indicated to me that she was in possession of a copy of Mr. Hensal's complaint. I respectfully request the Commission to investigate this breach of the confidentiality provisions of the Commission's regulatory scheme and take whatever actions the Commission deems appropriate.

If you have any questions regarding this matter or require further information, please do not hesitate to contact me.

Very truly yours,



Jonathan S. Shurberg

Enclosures

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999 E Street, NW  
Washington, DC 20463

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OFFICE OF GENERAL  
COUNSEL

**STATEMENT OF DESIGNATION OF COUNSEL**  
**Please use one form for each Respondent/Client**  
**FAX (202) 219-9923**

MUR # 6243

NAME OF COUNSEL: JONATHAN STURBERG

FIRM: \_\_\_\_\_

ADDRESS: 1317 APPLE AVENUE

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The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

1/4/10  
Date

[Signature]  
Respondent/ Client Signature

Montgomery County  
Councilmember  
Title

RESPONDENT/CLIENT NANCY NAVARRO  
(Please Print)

MAILING  
ADDRESS: P.O. Box 10847

SILVER SPRING, MD 20910

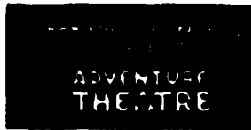
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Information is being sought as part of an investigation being conducted by the Federal Election  
Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(1)(A) apply. This section  
prohibits making public any investigation conducted by the Federal Election Commission without  
the express written consent of the person under investigation

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Opinion by Community

Wednesday, Jan. 13, 2010

### Complaint alleges Navarro violated campaign finance law

Web site designed by Venezuelan relative is focus of inquiry

by Edie Cunningham | Staff Writer



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The campaign manager for two former political opponents of Nancy Navarro is claiming the councilwoman violated campaign finance laws.

However, Navarro's attorney said Friday that the claims are unfounded and racially motivated.

In a complaint filed with the Federal Election Commission on Dec. 11, 2009, Eric Hensel wrote that Navarro (D-Dist. 4) of Silver Spring broke a campaign finance law when she had a Venezuelan relative design her 2008 campaign Web site and listed it as an in-kind contribution on financial disclosures.

Hensel, of Silver Spring, previously ran campaigns for Donald Praemer, who beat Navarro in a 2008 special election, and Benjamin Kramer, who lost to Navarro in a 2009 special election that followed Praemer's death.

Navarro joined the council in June 2009.

The Web site design cited in Hensel's complaint was done during the 2008 election.

It is illegal for a candidate for federal, state or local office to accept donations or in-kind contributions from a foreign national, according to the FEC. Services such as Web site design can be considered an in-kind contribution if the provider normally charges for them.

In a May 24, 2008, financial disclosure, Navarro's Web site design was listed as an in-kind campaign contribution, worth \$1,000. The contribution came from the Venezuelan Web design firm, Informanaga.

Navarro, a native of Venezuela, declined to comment, but her attorney, Jonathan Shurberg, who has a Silver Spring practice, said Hensel's Dec. 11 complaint against Navarro is one of at least four he has filed against the councilwoman.

"Mr. Hensel's allegations are legally and factually without merit and will be defended vigorously before the [Federal Election Commission]," Shurberg said in a phone interview. "Moreover, these allegations suggest a xenophobic and racial slant that is repugnant to the diversity of our community.

Ms. Navarro is also frustrated by the repetitive complaints of Mr. Hensel, as well as the whispering campaign in which he has engaged."

Shurberg said Hensel has been spreading lies about Navarro throughout the community.

Navarro is considering a lawsuit against Hensel, according to Shurberg.

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Hensel said that while he managed campaigns for Navarro's opponents in the past, he has filed complaints about her on his own and is not representing past or future opponents.

Hensel called Sturberg's racial allegation a diversion and said if Navarro had paid her relative to create the Web site, the transaction would have been legal, and Hensel would not have complained.

"It's just a matter of law," Hensel said Monday. "This is what the federal law is, and nobody followed it."

In a Dec. 29 letter to Hensel, Jeff S. Jordan, supervisor attorney with the Federal Election Commission, wrote that Hensel's complaint has been received and is being reviewed.

Christian Hilland, an FEC spokesman, said the commission does not comment on specific complaints.

Jared DeMarinis, director of candidacy and campaign finance for the Maryland State Board of Elections, said that while Navarro ran in a Maryland race, the FEC has jurisdiction because it is a federal law that prohibits taking money or in-kind contributions from a foreign national.

If the FEC finds that a law has been violated, it could issue no penalty or a fine determined on a case-by-case basis, Hilland said.

Sturberg said that Hensel has violated FEC's laws by discussing his complaint with The Gazette and others in the community. Complaints are supposed to remain confidential, the lawyer said.

Sturberg said he planned to respond to the FEC about the complaint this week.

"I think [Navarro's] tired of it," he said of Hensel's complaints. "She's ready to stop playing defense."

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